IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Civil Revision No. 2487 of 2005

Date of decision: 12.10.2006

Jasbir Kaur

..... Petitioner.

Versus

Harbans Kaur and another

..... Respondents.

CORAM: HON'BLE MR. JUSTICE P.S. PATWALIA

Present:- Mr. R.S. Dhaliwal, Advocate
for the petitioner.

Mr. Arun Jindal,Advocate
for the respondents.

P.S. PATWALIA, J. (ORAL)

The present revision petition has been filed by the petitioner aggrieved by the orders passed by learned trial court and the lower appellate Court declining the relief of injunction on an application filed under Order 39 Rules 1 and 2 of the Code of Civil Procedure.

The facts as emerge from the orders are that one Nachhatar Singh was the owner of the property in dispute. He had two children. Jasbir Kaur plaintiff in the suit and petitioner in the present revision petition and a son Karnail Singh. Karnail Singh has since died and survived by

widow Harbans Kaur and daughter Birbal Kaur, who are defendants in the suit and respondents in this revision petition. Consequent upon the death of Nachhatar Singh his property was partitioned in the year 1998 among his heirs including the plaintiff and the defendants on the basis of natural succession.

The present suit was instituted by Jasbir Kaur in May 2003 on the plea that she had chanced upon a Will dated 15.04.1987 allegedly executed by Nachhater Singh in her favour, in which she alone was entitled to inherit the entire property. The Will set up is an unregistered Will. After considering all these facts, the trial Court concluded that the plaintiff has no prima facie case in her favour since the Will was unregistered and the original of the Will has not even been produced on record for reference. The trial Court has held that it was doubtful whether the plaintiff would ultimately succeed in the suit. It was further held that any alienation made by the defendants during the pendency of the suit would be subject to the doctrine of lispendence. The application was declined by the trial Court with the following observations:-

> "Now it is a matter of fact only whether the Will propounded by the plaintiff would succeed or not. The original will has not been placed on record for reference, by this court, but the defendants being rightful owners cannot be restrained from enjoying the property, in their hands. Alienation of the property is an essential attribute of ownership. It is doubtful, whether the plaintiff would ultimately succeed in suit, by establishing herself the only legal heir of Nachhatar Singh, on

the basis of testamentary inheritance. At the same time, any alienation, made by defendants, during the pendency of present suit, would be taken care of doctrine of lispendence. It is required that defendants shall incorporate the factum regarding pendency of present suit, in the sale deed, if any, which is intended to be entered into by them, during the pendency of present suit."

The findings have been confirmed by the lower Appellate Court

After hearing learned counsel for the parties, I do not find any error in the view taken by the trial Court on the basis of aforementioned facts. It cannot be said that there is a strong prima facie case in favour of the petitioner-plaintiff in the suit. Her interest has been protected by directing the defendants to incorporate the factum of the pendency of the present suit in any sale deed, which may be executed by them.

For the reasons aforementioned, I do not find any merit in this revision petition and the same is accordingly dismissed.

October 12 , 2006 **(P.S. PATWALIA)**
dinesh **JUDGE**